IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 95 of 2001
(Old No. 977 of 1992)

Commissioner of Sales Tax
U.P. Lucknow. ……Applicant/Revisionist

Vs.

B.M. Rice Mills
Rudrapur, Nainital …..Opposite Party

Shri Pitamber Maulekhi, Learned Additional Advocate General for the Revisionist.
None for the respondent.

Hon'ble Prafulla C. Pant, J.

This Sales Tax Revision was filed before the Allahabad High Court in the year 1992, from where it has been received by transfer by this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

The revision, preferred under Section 11(1) of U.P. Sales Tax Act, 1948, is directed against order dated 21.02.1992, passed by Sales Tax Tribunal, Bareilly in S.A.No. 227 of 1991 and 248 of 1991, whereby both the appeals one that of the assessee and another that of the revenue were dismissed.

The question of law involved in this revision is as under:-

Whether in the facts and circumstances of the case, the Sales Tax Tribunal was justified in holding that the sale of rice made with form 3C(2) to the purchaser was central sales tax and no liability to tax accrued even thought dealer himself failed to show the inter state sales?

Heard Shri Pitamber Maulekhi, learned counsel for the revenue. None appeared on behalf of the assessee.

The assessee is a dealer who runs a rice mill. He produces rice and rice polish. He obtained eligibility certificate under Section 4A of U.P. Sales Tax Act, 1948. The dispute pertains to the penalty imposed for the assessment year 87-88.

Learned counsel for the revenue, argued that assessee, a new manufacturing unit, registered under Sales Tax Act, 1948, obtained eligibility certificate under Section 4A of the aforesaid Act. As such, it was exempted from the tax for the impugned assessment years. There is no dispute that he did not pay any tax for the assessment year, yet it issued form 3C (2) to the purchaser of his rice, which means that he gave a declaration of the purchaser that he had actually paid the tax. As such, the said declaration was false to the extent the same was not an inter-state sale. Admittedly, the assessee has shown sale of rice to the tune of Rs. 18,87,876/- in the assessment year 1987-88, for which he issued form 3 C(2), out of which sale to the extent of Rs. 4,62,480/- was inter state sale but as to the remaining sale that is to the extent of Rs. 14,25,396/-, it was sale within the state. There is no doubt that on the first sale within the state, the tax is payable on the commodity. As such, the Assistant Commissioner, Sales Tax as well as learned Trade Tax Tribunal, has erred in law by saying that the assessee has not evaded the tax in respect of the sale made within the sate for which form 3 C(2) was issued. Whether the tax was payable by the assessee or by the purchaser, by issuing form 3C (2) in respect of sale within the state, the tax has been got evaded by the assessee. That being so, both the Assistant Commissioner, Sales Tax as well as learned Trade Tax Tribunal, have erred in law in permitting the exemption of tax to the tune of Rs. 18,499.16, which was

Payable on sale within the state to the tune of Rs. 4,62,480/-. Therefore, the impugned order is liable to be set aside to that extent and is accordingly set aside. The revision is allowed. Department appeal No. 248 of 1991 (19877-88), shall stand allowed to the above extent. Question of law stands answered accordingly in favour of the revenue.

(Prafulla C. Pant, J.)

Dt : 16.08.2005

Sweta